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The opinion in support of the decision being entered today was **not** written for publication in a law journal and is **not** binding precedent of the Board.

Paper No. 27

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES  
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**Ex parte** MARC ELLER AND ZVI YANIV

\_\_\_\_\_  
Appeal No. 2004-1516  
Application No. 09/553,012  
\_\_\_\_\_

ON BRIEF  
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U.S. PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Before BARRETT, GROSS and NAPPI, **Administrative Patent Judges.**

NAPPI, **Administrative Patent Judge.**

**DECISION ON APPEAL**

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 14, 16 through 25, 27 through 35, 37 through 41 and 55. For the reasons stated *infra* we affirm-in-part the examiner's rejection of these claims.

**The Invention**

The invention relates to a system for use with electronic billboards, whereby a user can access a web site to upload a desired advertisement to a server and select a billboard to display the advertisement. When the advertisement is approved, the

advertisement is then transmitted to the selected billboard to be displayed at the time requested by the user. (See page 3 of appellants' specification).

Claim 14 is representative of the invention and is reproduced below:

A method for displaying information on an electronic billboard, comprising the steps of:

providing a first electronic billboard at a first location;

coupling a first information handling system to the first electronic billboard so that the first information handling system can control information to be displayed on the first electronic billboard;

providing a second electronic billboard at a second location;

coupling a second information handling system to the second electronic billboard so that the second information handling system can control information to be displayed on the second electronic billboard;

coupling the first and second information handling systems to a third information handling system over the Internet;

selecting, via the third information handling system, which of the first and second electronic billboards will display the information;

uploading the information from the third information handling system over the Internet to the information handling system controlling the selected electronic billboard;

selecting, via the third information handling system, a time period for displaying the information on the selected electronic billboard; and

displaying the information on the selected electronic billboard during the selected time period.

#### References

Royal, Jr. et al. (Royal)	5,980,090	November 9, 1999 (filed February 10, 1998)
Adler et al. (Adler)	6,009,409	December 28, 1999 (filed April 2, 1997)

### **Rejections at Issue**

Claims 14, 16 through 25, 27 through 35, 37 through 41 and 55 stand rejected under 35 U.S.C. § 103 as being unpatentable over Royal in view of Adler. The rejection is set forth on pages 3 through 12 of the answer.

### **Opinion**

We have carefully considered the subject matter on appeal, the rejection advanced by the examiner and the evidence of obviousness relied upon by the examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellants' arguments set forth in the briefs,<sup>1</sup> along with the examiner's rationale in support of the rejection and arguments in rebuttal set forth in the examiner's answer.

With full consideration being given to the subject matter on appeal, the examiner's rejections and the arguments of appellants and examiner, for the reasons stated *infra*, we will sustain the examiner's rejection of claims 14, 16, 18, 19 through 21, 27, 28, 31, 32 and 37 through 39 under 35 U.S.C. § 103. However, we will not sustain the examiner's rejection of claims 17, 22 through 25, 29, 30, 33 through 35, 40, 41 and 55 under 35 U.S.C. § 103.

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<sup>1</sup> This decision is based upon the Appeal Brief received November 17, 2003 (certified as being mailed on November 11, 2003, in accordance with 37 C.F.R. § 1.8(a)) and the Reply Brief received March 8, 2004 (certified as being mailed on March 4, 2004, in accordance with 37 C.F.R. § 1.8(a)).

### **Grouping of the Claims**

At the outset, we note that appellants state on page 4 of the brief that, "claims 14, 16-25, 27-35, 37-41 and 55 are to be considered individually per the reasons set forth in section VIII."

37 C.F.R. § 1.192(c) (7) (July 1, 2003) as amended at 62 Fed. Reg. 53196 (October 10, 1997), which was controlling at the time of appellants' filing of the brief, states:

For each ground of rejection which appellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and in the argument under paragraph (c) (8) of this section appellant explains why the claims of the group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable.

Accordingly, we will group the claims into 11 groups.

Group A consists of claims 14, 16, and 37 through 39 with claim 14 as the representative claim. (We note appellants' arguments do not directly address claim 16, and appellants' arguments, on page 12 of the brief, group claims 37 through 39 with claim 14).

Group B consists of claims 17, 22, 23 and 55, with claim 17 as the representative claim. (We note that appellants' arguments, on pages 7, 8, 10 and 13 of the brief, group claims 17, 22, 23 and 55).

Group C consists of claim 18.

Group D consists of claims 19 through 21, with claim 19 as the representative claim. (We note that appellants' arguments, on pages 9 and 10 of the brief, group claims 19 through 21).

Group E consists of claims 24 and 25, with claim 24 as the representative claim. (We note that appellants' arguments, on page 10 of the brief, group claims 24 and 25).

Group F consists of claims 27, 28, 31 and 32, with claim 27 as the representative claim. (We note that appellants' arguments, on page 12 of the brief, do not address why dependent claims 28, 31 and 32 are separately patentable).

Group G consists of claims 29, and 30, with claim 29 as representative claim. (We note that appellants' arguments, on page 12 of the brief directed to claims 29 and 30 are the same).

Group H consists of claim 33.

Group I consists of claims 34 and 35, with claim 34 as the representative claim.

Group J consists of claim 40.

Group K consists of claim 41.

Appellants argue, on page 4 of the appeal brief, "the disclosure is not properly objected to for including embedded hyperlinks." Appellants further argue this issue on page 2 of the reply brief. This relates to a petitionable matter and is not an appealable matter. See Manual of Patent Examining Procedure (MPEP) §§ 1002 and 1201.

Accordingly, we will not review the issue raised by the appellants on page 4 of the brief and page 2 of the reply brief.

**Rejection of Claims in Group A (Claims 14, 16, and 37 though 39).**

Appellants argue on page 5 of the brief that the rejection of claim 14 is improper as Royal does not teach using the third information handling system to select the time period for displaying information on the selected billboard. Further, appellants argue that Adler “merely teaches that at least two advertisements may be allocated to be displayed on a single display device of a remote computer, so that the advertisements may be displayed at different times on that particular single remote computer.” Thus, appellants conclude, “it is impossible for *Adler* to select a time period for displaying information on an electronic billboard that has been selected from at least two electronic billboards at separate locations.” On page 6 of the brief, and page 2 of the reply brief, appellants assert that the examiner has provided no objective evidence of suggestion to combine Royal and Adler.

We are not convinced by appellants’ arguments. We find that Royal’s remote server and browser items 25 and 26, as modified by Adler, teach the claim 14 limitation of “selecting, via the third information handling system, a time period for displaying the information on the selected electronic billboard.” Royal teaches that remote server and browser, items 25 and 26, can access any of the devices at a service station, we consider the remote server and browser to meet the claimed third information handling system. (See column 8, lines 7-11). The devices include a display, item 38 in figures 2 and 3. (See Column 4, lines 2-3 and 9-10). The data downloaded to these devices can include advertising information, which can include several commercials. (See column 8, line 59 and box titled “advertising interface” in figure 7b). Royal is silent as to any

sequence or timing of displaying the advertisements. We find that a skilled artisan in reviewing Royal's disclosure would recognize that the three advertisements couldn't be displayed concurrently and seek to employ some method of determining which advertisement to display at any given moment.

We find that Adler teaches a time allocation controller which controls the time allocated amongst advertisements displayed on a remote computer, (see column 2, lines 13-18) and that Adler provides the requisite suggestion to combine the references as asserted by the examiner. Our reviewing court has said "The motivation, suggestion or teaching may come explicitly from statements in the prior art, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved." *In re Huston* 308 F.3d 1267, 1278, 64 USPQ2d 1801, 1810 (Fed. Cir. 2002, citing *In re Kotzab* 217 F.3d 1365, 1370, 55 USPQ 1313, 1317 (Fed. Cir. 200)). Adler states in column 1, lines 54 through 56 "what is needed in the art is a system and method for efficiently scheduling the display of advertisements in a communications network, such as the Internet." We find that the nature of the problem to be solved in Adler, to efficiently schedule advertisements, provides the motivation to modify a system such as Royal, which has no system to schedule advertisements. We find that one of ordinary skill in the art, implementing Adler's scheduling in Royal's system, would be motivated to implement it in Royal's remote server and browser items 25 and 26, as Adler's disclosure is directed to setting the scheduling remotely. As stated *supra*, we find that Royal's remote server and browser, items 25 and 26, meet appellants' claimed third information handling system. Thus, we find motivation to combine Royal and Adler, and

that the combination teaches the selection of the time period for the advertisement is performed at the third information handling system. Accordingly, we sustain the examiner's rejection of claim 14 and the claims grouped with claim in group A, claims 16, and 37 through 39.

**Rejection of Claims in Group B (Claims 17, 22, 23 and 55).**

Appellants argue, on page 7 of the brief, that the rejection of the claim 17 is improper as Royal does not teach "a map that is displayed so that sites to which information is to be uploaded to can be selected from. Fig.7 merely shows an overview of a fueling site capable of being accessed by and communicating with a distributor."

The examiner states in response on page 15 of the answer:

Examiner disagrees with this situation because Royal teaches the backroom server 18 as a central control-type server capable of providing the client PC browsers 25, 27 with additional information relating to the equipment and providing links to available servers and other compliant devices in the fueling environment (col 7, lines 15-19). Royal also teaches information dissemination and advertising are preferably performed as services provided by the various local and remote servers. The browser software 36 for each client preferably has the ability to request services either locally or remotely, via the Internet or similar network.

We concur with the appellants. We fail to see the nexus between appellants' argument and the examiner's response. We find that Royal's disclosure does include a map, figure 7a, and we find that this map is a diagram to aid in explaining the invention. We find no teaching in Royal that the map is associated with a list of electronic billboards. Claim 17 includes the limitations of "selecting, via a third information handling system ... wherein the selected electronic billboard is selected from a list of



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available electronic billboards ... wherein the list includes a map of the first and second locations." Claims 22, 23 and 55 contain similar limitations. Accordingly, we will not sustain the examiner's rejection of claims 17, 22, 23 and 55.

**Rejection of Claims in Group C (Claim 18).**

Appellants state, on page 8 of the brief, that claim 18 includes the limitation of charging an amount of money for displaying the information on the selected billboard.

Appellants argue:

neither *Adler* or *Royal*, nor their combinations teaches or suggests charging an amount of money for the display of the information on the electronic billboard that is selected from the first and second electronic billboards to display information to be uploaded to the system, wherein the selected electronic billboard is selected from a list of available electronic billboards, which includes the first and second electronic billboards.

On page 15 of the answer, the examiner replies stating "[t]his argument is not persuasive because *Adler* reviews in the background of the invention [that it is known to] charge higher prices for advertising region (col. 1, line 45)."

We concur with the examiner and are similarly not convinced by appellants' arguments. As discussed *supra* with respect to claim 14, we find that the combination of *Royal* and *Adler* teach a system where a remote server can access any of a plurality of devices, which have displays, and that advertising material can be downloaded to these devices. Claim 18 also includes the limitation "charging an amount of money for the display of the information on the selected electronic billboard." *Royal* is silent as to fees being associated with displaying advertisements on the devices. As stated by the examiner, *Adler* teaches that charging for advertising based upon an individual location

is known. We find that the skilled artisan would recognize that the advertisers should be charged for displaying their advertisements on Royal's system devices, given Adler's disclosure that charging for advertising space is well known. Accordingly, we sustain the examiner's rejection of claim 18.

**Rejection of Claims in Group D (Claims 19 through 21).**

Appellants argue, on pages 9 and 10 of the brief, that the rejection of claims 19 through 23 is improper as the examiner has not interpreted the claims in accordance with MPEP § 2181 and as is required by the decision in *In re Donaldson* 16 F.3d 1189, 29 USPQ2d 1845 (Fed. Cir. 1994).

We note that the appellants have not specifically asserted that there are any limitations of either representative claim 19 or in claims 20 and 21, which are not taught by the reference applied by the examiner. Similarly, for the reasons stated *infra*, we do not find any limitation in representative claim 19, which is not taught by the references applied by the examiner. We also note that 37 CFR § 41.37(c)(1)(v)(2004) now requires that in the summary of the claimed subject matter section of the brief "every means plus function and step plus function as permitted by 35 U.S.C. § 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters." However, as 37 CFR § 41.37(c)(1)(v) was not in effect as of the appellants' filing of the brief, we provide the following analysis of the limitations in claim 19 and the corresponding structure in appellants' specification.

We find no corresponding structure in appellants' specification for the "means for providing a first electronic billboard at a first location." Appellants' specification identifies, on page 6, that the billboard is an electronic display item 200, however, we find no disclosure of structure to provide an electronic display. Our reviewing court has stated "if one employs means-plus function language in a claim, one must set forth in the specification an adequate disclosure showing what is meant by that language. If an applicant fails to set forth an adequate disclosure, the applicant has in effect failed to particularly point out and distinctly claim the invention as required by the second paragraph of section 112." *In re Donaldson* 16 F.3d 1189, 1195, 29 USPQ2d 1845, 1850. In this case we find that the claim limitation is clear in that the means is any and all structure that provides an electronic display and a rejection under 35 U.S.C. § 112, second paragraph, is not warranted. Clearly, the gas pump, item 12, with an electronic display, item 38, of Royal's figure 3 meets the limitation of "means for providing a first electronic billboard." Through similar reasoning Royal also teaches the limitation of "providing a second electronic billboard."

We find no corresponding structure in appellants' specification for the "means for coupling a first information handling system to the first electronic billboard so that the first information handling system can control information to be displayed on the first electronic billboard." We find that appellants' specification identifies on page 6, that the information handling system is a processor, memory device, with information to be displayed stored therein, and associated drivers are all located with the billboard. However, appellants' specification discloses no structure to couple the processor,

memory and drivers to the billboard. Again, we find the claim clear in that the means is any and all structure that couples the electronic display to the processor. Thus, we find that the connection between controller, item 32 and display, item 38, in Royal's figure 2 meets the limitation of "means for coupling a first information handling system to the first electronic billboard." Through similar reasoning Royal also teaches the limitation of "means for coupling a second information handling system to the second electronic billboard."

We find the corresponding structure for the "means for selecting, via the third information handling system, which of the first and second electronic billboards will display the information" and "means for uploading the information from the third information handling system over the internet" is a website. Pages 7 and 8 of appellants' specification identifies that the client logs on to a website to select a billboard and to upload advertising material. The client's system, although not disclosed as such, is assumedly a computer with a browser, to log on to the website. Thus we find that the system which the client uses to log on to the web site is the third information handling system. We find that Royal's remote server and browser meet the limitation of the third information handling system and that Royal teaches that a browser is used to access a web page to select the display device and to update the advertising. (See column 7, lines 25 to 28, and figure 7b).

We find the corresponding structure for “coupling the first and second information handling systems to a third information handling system over the Internet”<sup>2</sup> to be a server operated by the billboard provider. Page 7 of appellants’ specification identifies that a client communicates with a website and page 8 of appellants’ specification identifies that “ebillboard.net” is a server operated by the billboard provider. We find that the local server (item 18) of Royal meets this limitation. Royal teaches that the display devices can be either directly accessed by the Internet or they can be accessed through the local server (see column 5 lines 53-56 and column 6, lines 4-6). Thus, we consider accessing the display of the dispensing device through the local server to meet the claim limitation of “coupling the first and second information handling systems to a third information handling system over the Internet.”

We find no corresponding structure in appellants’ specification for the “means for displaying the information on the selected electronic billboard.” As stated *supra*, we find that appellants’ specification identifies, on page 6, that the billboard is an electronic display item 200. However, we find no disclosure of structure for displaying information on the electronic display. In this case we find that the claim limitation is clear in that the means is any and all types of signals that produce a display of the information on the electronic display and a rejection under 35 U.S.C. § 112, second paragraph, is not warranted. Clearly, the output of Royal’s controller, item 32, for the display, item 38,

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<sup>2</sup> We note the copy of claim 19 in appendix A contains an error. Claim 19 in the official file (original) includes the limitation “means for coupling the first and second information handling system to a third information handling system over the Internet.” The copy of claim 19 in appendix A includes the limitation “means for coupling the first and second information handling system to a third information handling system over a digital television broadcast network.” There is no disclosure in the originally filed specification of using a digital television broadcast network. We review the examiner’s rejection as it applies to claim 19 in the file and not as presented in appendix A.

produce signals which produce a display of the information and meet the limitation of "means for displaying the information on the selected electronic billboard."

For the forgoing reasons, we sustain the examiner's rejection of claim 19 and the claims grouped with claim 19 in group D, claims 20 and 21.

**Rejection of Claims in Group E (Claims 24 and 25).**

Appellants argue on page 11 of the brief:

The Examiner asserts that the step of uploading additional information concerning the advertiser via the remote computer by the advertiser at the advertiser's option is disclosed in *Royal* as the uploading of commercials 1, 2, and 3. The problem with such an assertion by the Examiner is that it again divorces this claim limitation from the remainder of claim 24. Claim 24 further asserts that this optional additional information is transmitted from the ebillboard.net server to a web site dedicated to the selected billboard. In fact, the Examiner has ignored this transmitting step of claim 24.

The examiner states, in response on page 15 of the answer: "These arguments are not persuasive because *Royal* teaches a homepage at a site's uniform resource locator address (block100) (fig. 5, col. 7, lines 20-22)."

We are not convinced by the examiner's reasoning. Claim 24 contains the limitations of uploading advertising data and additional information concerning the advertiser. Claim 24 also contains the limitations of transmitting the advertising data to a billboard and transmitting the additional data to a web site dedicated to the billboard. We note that we interpret the term "ebillboard.net" in claim 24, as a name, or designator, associated with the claimed server and afford that the term itself does not limit the claim. We find that *Royal* teaches the step of transmitting the advertising information to the selected billboard, via a web site. However, we find no disclosure in

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to the billboard. Accordingly, we will not sustain the examiner's rejection of independent claim 24 or dependent claim 25.

**Rejection of Claims in Group F (Claims 27, 28, 31 and 32).**

Appellants assert, on page 12 of the brief, that claim 27 includes a limitation of sending the first information over a second network to the first designated target display, wherein the first information is accompanied with a time when the first information is to be displayed on the first designated target display and that the art relied upon in the examiner's rejection does not teach this limitation.

We are not convinced by appellants' arguments. As stated *supra* with respect to claim 14, we find that the combination of Royal and Adler teach sending advertisement information to a designated display along with a selected time period to display the advertisement. Further, we find that Royal teaches that the connection from the remote server can either directly communicate to the pump with the display through the Internet or can communicate through the local server (item 18). We find that this communication through the local server requires first loading the information from the remote server to the local server via the Internet and then downloading the information from the local server to the electronic display, thus teaching the claimed receiving over a first network and sending over a second network. Accordingly, we sustain the examiner's rejection of claim 27 and the claims grouped with claim 27 in group F, claims 28, 31 and 32.

**Rejection of Claims in Group G (Claims 29, and 30).**

Appellants argue, on page 12 of the brief, that the rejection of claim 29 is improper, as the art applied by the examiner does not show the sending step of 27 sends the first information over the Internet to the designated display.

We concur. As discussed *supra* with respect to independent claim 27, we find the embodiment of Royal where the local server is the intermediary between the remote server and the designated display. We find that Royal teaches that the Internet is used to connect the remote server to the local server or the displays in the embodiment where the remote server can directly access the displays and use the Internet to connect the remote server and the local server in the embodiment where the local server acts as an intermediary. However, in the embodiment where the local server is the intermediary, the embodiment that teaches the uploading and downloading limitations of independent claim 27, we do not find that Royal teaches or suggests that the Internet is used to provide the information from the local server, item 18, to the display, item 38. Accordingly, we will not sustain the examiner's rejection of claims 29 and 30.

**Rejection of Claims in Groups H and I (Claims 33 through 35).**

Appellants argue, on page 2 of the brief, that the rejection of claim 33 is improper, as the art applied by the examiner does not teach the second network of independent claim 27 is part of the Internet.



We concur for the reasons stated *supra* with respect to claims 29 and 30. Claims 34 and 35 are dependent on claim 33. Accordingly, we will not sustain the examiner's rejection of claims 33 through 35.

**Rejection of Claims in Group J (Claim 40).**

Appellants argue, on pages 12 and 13 of the brief, that the combination of Adler and Royal do not teach: "the steps of outputting information on whether the target display device is available to display the content, permitting a selection of the target display device if it is available to display the content, and preventing a selection of the target display device if it is not available to display the content."

The examiner states in response, on page 17 of the answer:

Royal teaches a system (figure 2) associated with a computer readable medium, a system comprising a target display 38 (fig. 2), a information, a content (commercial, fig. 7B), whether the target display device is available to display the content, permitting a selection of the target display device if it is available to display the content, and preventing a selection of the target display device if it is not available to display the content (user selects device from the list of possible devices on site network (block 108, fig. 5, col.7, lines 34-37).

We disagree with the examiner. We find that Royal teaches that the system can access the display device as stated *supra* with respect to claim 14. However, we find no disclosure in either Royal or Adler of a step that prevents the selection of the target display if it is not available. While such a step seems intuitive, we find that the evidence of record lacks such a teaching. Accordingly, we will not sustain the examiner's rejection of claim 40.

**Rejection of Claims in Group J (Claim 41).**

Appellants argue on page 13 of the brief:

the Examiner is attempting to reject all 3 steps recited in claim 41 with the mere teaching in *Adler* that as advertisements arrive, a decision must be made as to whether or not to include the advertisement in the schedule of T time slots. However, this does not teach or suggest outputting information on data and time availability of the target display device to display the content. It also does not teach or suggest permitting a selection of the target display device at a selected data and time if the target display device is available to display the content at the selected date and time. It also does not teach or suggest preventing a selection....

On pages 17 and 18 of the answer, the examiner responds to this argument reiterating his arguments with respect to claim 40 and stating "Royal teaches the sales information (block 306) (fig. 7B) having a date 3/14/97 inherently including an expired time of the items on sale. Adler also teaches a schedule for advertisements (see abstract)."

We are not convinced by the examiner's reasoning. While the sections of the references cited by the examiner do address scheduling of advertisements, we do not find that they teach the specific step claimed, outputting information of time and data availability, permitting and preventing selection based upon the information of date and time. Accordingly, we will not sustain the examiner's rejection of claim 41.

Only those arguments actually made by appellants have been considered in this decision. Arguments which appellants could have made but chose not to make in the brief or by filing a reply brief have not been considered and are deemed waived by appellants [see 37 CFR § 1.192(a)]. Support for this rule has been demonstrated by our

reviewing court in ***In re Berger*** 279 F.3d 975, 984, 61 USPQ2d 1523, 1528-1529 (Fed. Cir. 2002) wherein the Federal Circuit Court stated that because the appellants did not contest the merits of the rejections in his brief to the Federal Circuit Court, the issue is waived. ***See also In re Watts*** 354 F.3d 1362, 1368, 69 USPQ2d 1453, 1458 (Fed. Cir. 2004).

In view of the forgoing, we will sustain the examiner's rejection of claims 14, 16, 18, 19 through 21, 27, 28, 31, 32 and 37 through 39 under 35 U.S.C. § 103. However, we reverse the examiner's rejection of claims 17, 22 through 25, 29, 30, 33 through 35, 40, 41 and 55 under 35 U.S.C. § 103. The decision of the examiner is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

**AFFIRMED-IN-PART**

  
ROBERT E. NAPPI  
Administrative Patent Judge

## BOARD OF PATENT APPEALS AND INTERFERENCES

RN/RWK

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